

# House File 352 - Reprinted

HOUSE FILE 352

BY COMMITTEE ON WAYS AND MEANS

(SUCCESSOR TO HSB 69)

(As Amended and Passed by the House April 13, 2023)

## A BILL FOR

1 An Act relating to an entity-level taxation election for  
2 pass-through entities and allowing a partner or shareholder  
3 to claim a credit against the individual and corporate  
4 income taxes and the franchise tax, and including effective  
5 date and retroactive applicability provisions.  
6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 422.11, Code 2023, is amended to read as  
2 follows:

3 **422.11 Franchise tax credit.**

4 1. The taxes imposed under **this subchapter**, less the credits  
5 allowed under **section 422.12**, shall be reduced by a franchise  
6 tax credit. A taxpayer who is a shareholder in a financial  
7 institution, as defined in section 581 of the Internal Revenue  
8 Code, which has in effect for the tax year an election under  
9 subchapter S of the Internal Revenue Code, or is a member of a  
10 financial institution organized as a limited liability company  
11 under **chapter 524** that is taxed as a partnership for federal  
12 income tax purposes, shall compute the amount of the tax credit  
13 by recomputing the amount of tax under **this subchapter** by  
14 reducing the taxable income of the taxpayer by the taxpayer's  
15 pro rata share of the items of income and expense of the  
16 financial institution and subtracting the credits allowed  
17 under **section 422.12**. This recomputed tax shall be subtracted  
18 from the amount of tax computed under **this subchapter** after  
19 the deduction for credits allowed under **section 422.12**. The  
20 resulting amount, which shall not exceed the taxpayer's  
21 pro rata share of the franchise tax paid by the financial  
22 institution, is the amount of the franchise tax credit allowed.

23 2. For a taxpayer making an election under section 422.16C  
24 that is also a financial institution subject to the franchise  
25 tax under subchapter V, the tax imposed under section 422.16C  
26 shall be reduced by a franchise tax credit equal to the amount  
27 of franchise tax paid by the taxpayer for the same year.

28 **Sec. 2. NEW SECTION. 422.16C Pass-through entity —**  
29 **election — entity-level tax — credit.**

30 1. As used in this section, unless the context otherwise  
31 requires:

32 *a.* "*Partnership*" means the same as defined in section  
33 422.25A, except a "*partnership*" does not include a pass-through  
34 entity that is a publicly traded partnership as defined in  
35 section 7704 of the Internal Revenue Code.

1     *b.*   "*Taxpayer*" means a partnership or an S corporation.

2     2.   For tax years beginning on or after January 1, 2022,  
3 notwithstanding any other provision of law to the contrary,  
4 a taxpayer may elect to be subject to the provisions of this  
5 section. This section only applies to tax years for which  
6 the limitation on individual deductions applies under section  
7 164(b)(6) of the Internal Revenue Code.

8     3.   *a.*   A separate election shall be made for each tax year  
9 on a form and at a time prescribed by the department. An  
10 election shall be irrevocable once made and shall be binding on  
11 the taxpayer and all partners or shareholders of the taxpayer.

12    *b.*   If an election is made under this section, a taxpayer  
13 shall not be required to file a composite return for the same  
14 tax year pursuant to section 422.16B.

15    4.   *a.*   A taxpayer making an election under this section  
16 shall be subject to tax in an amount equal to the maximum rate  
17 under section 422.5A, imposed against the taxable income of the  
18 taxpayer for the taxable year properly determined under this  
19 chapter and allocated and apportioned to the state under the  
20 rules adopted by the department. The tax shall be due with the  
21 taxpayer's return required under this chapter.

22    *b.*   The tax under this section shall be reduced by the credit  
23 provided in subsection 5, paragraph "*b*", and the franchise  
24 tax credit in section 422.11, subsection 2, and the composite  
25 credit in section 422.16B, subsection 4. Any other tax  
26 credits shall not be claimed by the taxpayer against the tax  
27 imposed under this section. A net operating loss or other loss  
28 carryback or carryforward shall not be claimed by the taxpayer.

29    5.   *a.*   For a taxable year in which a taxpayer made an  
30 election under this section, for the partners or shareholders  
31 of the taxpayer, the taxes imposed under this subchapter, less  
32 the credits allowed under section 422.12, or the taxes imposed  
33 under subchapter III or V, as applicable, shall be reduced by a  
34 credit equal to the product of the following amounts:

35    (1)   The ratio of the partner's or shareholder's share of

1 the taxpayer's taxable income over the taxpayer's total taxable  
2 income multiplied by the state tax liability actually paid by  
3 the taxpayer.

4 (2) The difference between one hundred percent and the  
5 highest individual income tax rate in effect for the tax year.

6 b. If the taxpayer is itself a partner or shareholder of  
7 another taxpayer making an election under this section, the  
8 credit under this subsection shall be allowed.

9 c. Any credit in excess of the tax liability is refundable.  
10 In lieu of claiming a refund, the partner or shareholder  
11 may elect to have the overpayment shown on the partner's or  
12 shareholder's final, completed return credited to the tax  
13 liability for the following tax year.

14 6. A nonresident individual who is a partner or shareholder  
15 of a taxpayer for a tax year in which an election is made under  
16 this section shall not be required to file an individual income  
17 tax return under section 422.13 for such tax year if the only  
18 Iowa source income of the individual is from a taxpayer making  
19 the election under this section, the credit allowed to the  
20 partner or shareholder equals or exceeds the tax liability of  
21 the partner or shareholder for the tax imposed in the tax year  
22 the election is made, and if the taxpayer files and pays the  
23 tax due under this section.

24 7. A taxpayer making an election under this section is  
25 liable for the entity-level tax imposed pursuant to this  
26 section, including applicable penalties and interest. This  
27 section shall not prohibit the department from assessing  
28 direct or indirect partners and shareholders for taxes owed in  
29 the event that the taxpayer fails to timely make any payment  
30 required by this section for any reason.

31 8. In addition to and not in lieu of any period of  
32 limitation provided in section 422.25, if a taxpayer files an  
33 amended return that requests a refund of tax previously paid  
34 within one year prior to the expiration of the department's  
35 applicable period of limitations in section 422.25, the

1 department has one year from the date of receipt of the  
2 amended return to assess any direct or indirect partners  
3 and shareholders related to the reduction of any tax credit  
4 provided under subsection 5.

5 9. The department shall adopt rules pursuant to chapter 17A  
6 to administer this section.

7 Sec. 3. Section 422.85, Code 2023, is amended to read as  
8 follows:

9 **422.85 Imposition of estimated tax.**

10 A taxpayer subject to the tax imposed by sections 422.16C,  
11 422.33, and 422.60 shall make payments of estimated tax for the  
12 taxable year if the amount of tax payable, less credits, can  
13 reasonably be expected to be more than one thousand dollars for  
14 the taxable year. For purposes of this subchapter, "*estimated*  
15 *tax*" means the amount which the taxpayer estimates to be the tax  
16 due and payable under subchapter II, III, or V of this chapter  
17 for the taxable year.

18 Sec. 4. ESTIMATED TAX PAYMENTS FOR TAX YEARS BEGINNING PRIOR  
19 TO EFFECTIVE DATE OF ACT. Notwithstanding sections 422.16 and  
20 422.85, a taxpayer electing to apply the provisions of section  
21 422.16C shall not be required to make estimated tax payments  
22 for a tax year beginning prior to the effective date of this  
23 Act.

24 Sec. 5. PENALTY AND INTEREST WAIVER RELATED TO TAX YEARS  
25 ENDING PRIOR TO EFFECTIVE DATE OF ACT. Notwithstanding any  
26 provision of law to the contrary, the department may waive  
27 penalty and interest for a return filing or tax payment related  
28 to an election to be subject to the provisions of section  
29 422.16C for a tax year ending prior to the effective date of  
30 this Act.

31 Sec. 6. EFFECTIVE DATE. This Act, being deemed of immediate  
32 importance, takes effect upon enactment.

33 Sec. 7. RETROACTIVE APPLICABILITY. This Act applies  
34 retroactively to January 1, 2022, for tax years beginning on  
35 or after that date.